

MINUTES
TOWN OF POLK
WASHINGTON COUNTY
BOARD OF ZONING APPEALS
Thursday November 20, 2014 - 6:30 p.m.

Minutes APPROVED 6-4-2015
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A. Meeting Called to Order by Chairman Patrick Fehring at 6:30 p.m., Polk Town Hall, 3680 State Hwy 60 Town of Polk, Washington County, Wisconsin.

B. Official Meeting Notification. The Secretary read the Official Meeting Notification: Notice of the November 20, 2014, Town of Polk Board of Zoning Appeals Meeting was posted on the Town website, the Town bulletin boards at the Town Hall, Roskopf RV Center, and Cedar Hills Lake Subdivision. Notice was copied to Hartford Times Press, Milwaukee Journal, West Bend News, WBKV, and WTKM. Parties of Interest were notified.

C. Roll Call. All members of the Zoning Board of Appeals were present: Chairman, Patrick Fehring, Karen Reiter, Mary Franz, Marilyn Mayer, Rodney Bartlow; and Alternate Robert Anderson, Secretary Tracy Groth, Building Inspector John Frey.

D. Approval of Agenda. Chairman Fehring called for a motion to approve the agenda. Karen Reiter motioned to approve the agenda, Marilyn Mayer seconded the motion. All voted in favor and the motion carried.

E. Approval of Minutes – September 25, 2013. Marilyn Mayer moved to approve the Minutes. Rodney Bartlow seconded the motion. All voted in favor and the motion carried.

I. Public Hearing: Rob and Linda Rueth- Property Owners

A. Zoning Secretary Groth read the Variance Notice: The appeal is to consider a variance to Section 6.04(2) Existing Substandard Lots and Section 8.02(1) Existing Nonconforming Structures, of the Zoning Ordinance Title X of the Municipal Code of the Town of Polk to allow a variance of twenty feet (20ft.) to the minimum street yard setback of fifty feet (50ft) on an Existing R-1 Substandard Lot to construct an addition to an existing single family home. Property is described as: 4815 Cedar Hills Drive, Tax Key T9-0097-017. N1/2 SW Cedar Lake Hills. Lot 5 BLK 3, DOC 988922. Section 5, T10N-T19E, Town of Polk, Washington County.

B. Consideration of Variance Request

Chairman Fehring provided procedural information to the audience, advising all that everything said at the meeting would be recorded and a matter of public record. Those wishing to speak were asked to step to the microphone, speak clearly, and announce their name for the record. Secretary Groth read the Secretary Summary that was provided to the Board in their information packets. *The Secretary Summary is attached to the Minutes.*

Chairman Fehring invited the Applicant to describe to the Board, their request for a zoning variance. Linda Rueth commented that they are asking for a variance because “the home that we have on the corner we are already at the minimum setback[s] for the front, side and rear and the septic of the home is the rear yard. Our second side yard is on a corner, which is the area in which we would like to extend by 12 feet the footprint of the home to make it larger. That basement wall is already collapsing and needs to be repaired.”

Chairman Fehring invited questions from the Board members. Karen Reiter referred to the Certified Survey Map (CSM) submitted by the applicant. She noted that the house is 42.4 feet off of right of way and asked for clarification of the variance request. Tracy Groth commented that the variance of twenty feet was to the minimum setback of the home by ordinance. John Frey, Building Inspector confirmed that the variance would be with the minimum set back, not from the existing footprint of the house. The setback is already non-conforming; the variance would make it more nonconforming. Mary Franz asked if the current non-conformance was based on a variance by the Town. Frey answered that the home was built before the current Town Zoning Ordinance was put in to effect.

Rodney Bartlow referred to the location to the septic. "You are making extensive renovations to the entire house; you're dealing with a 40 year old septic system. Is it going to need any work for the upgrade of the house? Is it appropriate to consider moving the septic and building the home into that space?"

Linda Rueth responded, "In August when we purchased the home, the septic was inspected and found to be sound; they replaced the baffles as well." Franz asked if the roads in Cedar Lake Hills were private or public roads. Groth and Frey answered that the roads were Town roads. Franz asked if the variance was from the center of the road. Groth answered that with non-conforming lots, setbacks are based on a distance from the property line. Franz referred to the tree that the applicants indicated would have to be removed. Linda Rueth noted that the intersection where their lot is located is a busy intersection and the pine tree is near the sight line. "In doing this remodel we would have to remove the pine tree which would improve the sight line." Bartlow asked if the applicant was taking the house to the deck or rebuilding. Rueth said that they would need to get more information about the basement because the east side of the basement does need extensive repair. Nothing has been remodeled since the house was built. "We are trying to save as much of the first floor as possible." Franz commented, "With Section 6.04, we have a certain amount of obligation to make no changes that make the structure more nonconforming. This is a huge hurdle for this committee."

Fehring noted that the according to Title X the use may be continued even though it does not conform. Section 6.04 states that a nonconforming structure "Shall not be extended or enlarged" unless you can show that granting this variance will allow you proper use of this property. "You can build a house, or repair the house that's there without enlarging the house - without making it more nonconforming. But when you are enlarging the house, we have to be able to show by the preponderance of the evidence, that granting you the variance is necessary to preserve your property rights. Honestly, I have a hard time seeing that. I understand what you want to do."

Fehring invited comment from the public in attendance.

Jack Dowden: President of the Cedar Lake Hills Service Corporation addressed the Board. "There are over 100 residents within our service corporation. I understand your ordinance issues. Most homes are 40-50 years old. Like this home they are need of upgrading. We have been fortunate to have a couple of new constructions and significant remodeling. We are hoping to keep that trend up. This particular home has some special interest on behalf of everybody in the service corp. A lot of the people who learn about our neighborhood, they are boating on the lake and this is the view that they see from the bay of Big Cedar. It's their first impression. Largely that view is framed by six homes. One of which is fairly new, four that are significantly remodeled and this subject property, which is, quite frankly, well overdo for a facelift. In the interest of everyone in the subdivision, to promote turnover and sale of our properties, we have a particular interest in seeing those six homes maintained in good condition and to be attractive. I believe that the variance the Rueth's are bringing forward tonight would serve that purpose. Meadow Lane is really just a limited access for only eleven homes. The street is physically bounded with a deep ditch that carries a lot of runoff into the lake. The potential for that road to be widened is slim to none. The road is part of the parade route for the 4th July parade. 95% of traffic in the neighborhood is carried through other major thoroughfares. I understand the limitations of your Ordinances, but would ask that you not try to find a convoluted rationale or reasons for denying this variance. On behalf of the shareholders of Cedar lake Hills we ask that you favorably consider this variance request."

Fehring: "Thank you for your comments. Honestly I am not trying to find some rationale to deny this variance; I am trying to find a rationale to grant it. We need to look at the evidence that you present. There is nothing in the Ordinance that talks about how many cars go down the road, or how deep ditches are. We can't deal with that. We need to be able to see what you are doing is to preserve your property rights. That is evidence that

you need to show us - that there is no way you can enjoy the house, the land, without granting this variance. We are open to seeing or hearing any other evidence that your property rights would be preserved."

Franz: "I am concerned with that we as a committee do not set a precedent that can be challenged in a court of law. You are already increasing the size of the house by going up, which is a nice match to accommodate more spatial needs. As the Chairman said, if we vote in favor of the variance, we are setting a precedent that we must be able to substantiate to the rest of the neighbors as the neighborhood changes. This area is one of our highest areas of frequency that this committee deals with. We try to be as fair as possible."

Mark Monroe addressed the Board: "I live across the street from this house. Actually, this addition would work on almost any house in this subdivision. What has them trapped here is the fact that it's on a corner lot and you have the fifty (50) foot side yard setback from two ways instead of one way. Basically, with the way the road works there, with the curve in the road there, and the deep ditch, it is not blocking any view or causing any kind of safety type issue. If it wasn't on a corner lot, a twelve (12) foot addition would fly on a good percentage of the houses in the area. Part of the problem is because the houses are old and they do need to be improved and if somebody wants to take that (inaudible) and buy that and stick that kind of money into it, well, nobody is really building 1300-1400 square foot ranches anymore. And if somebody is looking for a really nice home on the lake with a lot of glass where they can view to the north end [of the lake] they are going to have to be able to expand that house to make that work. I mean, this is an old house. I know the house pretty well; you can't get into the house from the garage. It needs to be updated. The basement is in poor condition due to the amount of water that was there and needs to be redone. I think that it is a win-win for the subdivision and the Town. It's going to increase revenue from the property as it will be valued at a considerably higher rate than it is now. I don't know of anybody that would be opposed. We hope you can make this happen as it would be positive for everybody."

Fehring commented, "I don't disagree with you. I understand that the house can use a face lift, but the idea of making it more nonconforming, there is no exception in the code because they want big windows for lake views and that no one is building houses of this size. We have to look at code as law and in order to give some kind of variance to deny the law we have to see some type of exceptional circumstance. There are five things that we have to show by a preponderance of the evidence that could be proved in a court of law. We have to show that we are preserving intent, find exceptional circumstance, that there is no economic hard ship or self imposed hardship, or an absence of detriment. Where I am stuck is on the preservation of property rights. If you can show me, or show the Board, that we need to grant this to preserve your property rights so that it must be necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same vicinity - something that you could not enjoy the property, enjoy the house on the property unless you make it more non-conforming. And that is really to me, that's what I need to see."

John Frey: "Most of appeals are interesting in their own way. The [Zoning] Board of Appeals (ZBA) takes each application individually based on their merit or lack of merit. One of the things, especially around the lake, is that everyone is watching. What the ZBA does when it grants a variance or denies or modifies a variance, they are setting a precedent. They have got to be able to point to the individual situation and substantiate why this is different than everybody else with a corner lot in town, otherwise everyone would be asking for the same thing".

Franz: "John when you reviewed the plans, did you see any potential to modify this house and keep it in compliance?"

Frey: Yes, I did. And I took a look at the patio area on the back of the house and up to the garage area as being a logical place to go up. Another factor that the architect could take into consideration, is if they are going to

rebuild that foundation wall at the east side of the house; they can cantilever a max of two (2) feet, so they could pick up some bowed bays with a two (2) foot cantilever; they could pick up that patio area and the floor plans could be modified so that they have a bigger master bedroom and a better layout. There is a no man's land in there that would make a nice dining area. I think the house could be very nicely added on to and remodeled without making the house more nonconforming. I think the septic is expendable. These days a two compartment tank and a mound system is the norm. That could free up the patio area and give more area to expand the house."

Franz asked the homeowner if they had an inspection prior to buying the property. The applicants responded, "Yes". Franz asked, "And they found the current septic system is acceptable?" Rueth answered, "Yes". Franz stated, "Then I don't feel that as a committee that we can pose the additional expense at this time. It may fail tomorrow for all we know. Are the homeowners aware of modifications that the Building Inspector has proposed such as the cantilevered bow bay windows?"

Rueth: "No, we did not discuss those ideas with John [Frey].

Franz: "It does offer some options that you were not aware of."

Rueth: "We want to bring it into modern lines. Bow bay windows and simply adding a second floor won't accomplish that. We are not just trying to get square footage. We need offices since we work from our home. The interior of the home has not been set. We first wanted to get through the process of establishing what our maximum footprint could be and where we could replace failing basement walls. The interior design still needs work."

Franz: "It may be a matter of building the spaces you need rather than just dead airspace, such as a loft."

Fehring: "Is the house currently a 2 or 3 bedroom house?"

John Frey: "It's a 3 bedroom house. Unfortunately aesthetics are not grounds for a variance."

Fehring asked for any other public comments:

Clay Covert addressed the ZBA and asked if the issue of the right of way had been addressed.

Franz asked John Frey if the right of way (ROW) was measured over the slew.

John Frey: "The location relative to the street, is an arc in measurement that the surveyor shows to the closest point of the house to the closest point of the arc as it swings through. Typically the property line is on the back side of the ditch - the high side of the ditch. I believe that in Cedar Lake Hills, they are not 66 foot roads. Land divisions at that time would have had different criteria. If the ROW is 60 feet, the center of the asphalt is not always dead center in those 60 feet. The road can wiggle waggle through there so that the setback and dimensions are taken from that front property line. All of those radiuses and distances and lengths are determined by a surveyor."

Fehring closed the meeting to all public comments and commented that the Zoning Board of Appeals will consider the testimony among themselves and render a decision. Fehring asked for comments from the Board Members.

Rod Bartlow: "I am sympathetic to what they want to do and I see some exceptional circumstances with the corner lot; on the other hand, we have seen some really grand houses go up on the lake that would fit within the footprint of this existing house. I am not sure that they have considered all the alternatives. I think there is a design that would satisfy their aesthetic and spatial needs. They are going to be doing a lot of tearing apart before they start doing any building."

Karen Reiter: "If we grant it, it becomes a conforming structure and we have to look at the other properties that are on Cedar Lake and the 50 foot widths and all that, so this is a big decision. Once we make this decision it is a decision will be followed. We have leeway here and as Rod said, we do see a lot of houses and they have gone straight up. I would have a difficult time granting this variance."

Marilyn Mayer: "I have to agree. I would have a difficult time granting this variance."

Franz: "I am not critical of your plan; it's just that if we grant this variance, it's going to affect us going forward from a legal standpoint. You can look at your plan more innovatively. We don't have any wiggle room here."

Fehring: "I don't mind setting a precedent as long as I have some legal basis for doing so. I need to be able to stand up in front of someone and tell them the evidence that convinced me you needed to do this in order to preserve your property rights. I have not seen evidence tonight that you need to make this structure more nonconforming in order to preserve your rights.""

Rueth: "If the house wasn't built nonconforming, would this be a problem?"

Fehring: "Every situation is different. It is not a matter that it is nonconforming; it is a matter that we need, in order to grant the variance, it has been proven by a preponderance of the evidence that it is necessary to preserve rights of the owner. The purpose of a variance is to level the playing field. We haven't seen anything here tonight that shows they have no other options. The house can be enlarged. The house can be rebuilt in the current footprint and made larger."

Rueth: "There is too much cost involved in the options that the Building Inspector suggests."

Frey: "Dollars are not a basis for issuing a variance."

The Board went immediately into their findings:

Preservation of Intent. *No variance will be granted that is not consistent with the purpose and intent of the regulations in which the development is located. No variance shall have the effect of permitting in a use in any district that is not a stated permitted use or accessory use or conditional use in that particular district.*

The Board found for Preservation of Intent.

Exceptional Circumstances: *There must be some exceptional, extraordinary, or unusual circumstances applying to the lot, parcel, use, or intended use that does not apply generally to other properties or uses in the same district and the granting of the variance would not be so general or recurrent in nature as to suggest that the Zoning Ordinance should be changed.*

The Board found for Exceptional Circumstances due to the substandard lot and corner lot.

Economic Hardship and Self-Imposed Hardship *Not Grounds for Variance. No variance shall not be granted solely on the basis of economic gain or loss. Self-imposed hardships shall not be considered grounds for the granting of a variance.*

The Board found that the hardship was not self imposed as the lot's nonconformity and corner location are not the fault of the property owner.

Preservation of Property Rights: *The variance must be necessary for the preservation of and enjoyment of substantial property rights enjoyed by other property owners in the same district and same vicinity.*

The Board found that the applicant has a right to have a home to live in and enjoy the home, but the Board does not need to grant this variance for the applicant to do that. The footprint of the current home can be enlarged. There is also additional lot space that can be utilized without the need for a variance. The Board cannot find that the variance is necessary to preserve the property rights of owner.

Absence of Detriment: *No variance shall be granted that creates substantial detriment to adjacent properties or that will materially impair or be contrary to the purpose and spirit of Title X or to the public interest.*

The Board found no apparent detriment.

Rodney Bartlow moved to deny the variance. Karen Reiter seconded the motion. All voted in favor and the motion carried.

Fehring commented to the Applicant, "I am sorry but the variance is not granted."

Adjournment

Karen Reiter moved to adjourn. Rodney Bartlow seconded the motion. All voted in favor to adjourn. The meeting adjourned at 7:22PM.

Respectfully submitted,

Tracy Groth
Zoning Secretary